

Communications
Workers of America
AFL-CIO, CLC

501 Third Street, N.W.
Washington, D.C. 20001-2797
202/434-1110 Fax: 202/434-1139

Morton Bahr
President



Via Fax

March 1, 2004

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Powell:

**RE: Petition for Declaratory Ruling That AT&T's Phone-to-Phone IP
Telephony Services Are Exempt from Access Charges, WC Docket
No. 02-361**

The Commission is presently considering a number of proceedings that concern the regulatory treatment of voice over the Internet services. However, the Commission can and should decide immediately a key issue that is essential to the health and viability of the universal service fund and access charge system. The Commission should rule on the pending petition by AT&T and clarify that a carrier's decision to use Internet protocol technology to route traditional long distance calls does not relieve a carrier of its universal service and access charge obligations under the Telecommunications Act.

It is clear from the Commission's existing rules that AT&T's service is a "telecommunications service" under the Act. AT&T both originates and terminates long distance calls using a local exchange carrier's circuit switched telephone network. The Commission's current rules clearly require that these carriers contribute their fair share to universal service and pay access charges for these calls.

AT&T's claim that it has no regulatory obligations for this type of traffic is incorrect and, if sanctioned by the Commission, will quickly undermine the existing universal service and access charge regimes. Unless the Commission resolves this petition soon, other carriers in the industry will follow suit and treat such traffic as unregulated. These carriers may also refuse to contribute to universal service or refuse to pay access charges on this traffic. This could irreparably damage the universal service and access charge systems.

The Honorable Michael K. Powell
March 1, 2004
Page 2

In addition, we understand that AT&T has requested that the Commission apply its ruling “prospectively.” We respectfully suggest that the Commission should reject that request. The law is clear, and long has been, that access charges apply to the type of service at issue in AT&T’s petition. The 1998 Report to Congress did not change that rule. In addition, other interexchange carriers have been and continue to pay access charges and universal service charges on these types of calls. A prospective only ruling would unjustifiably excuse AT&T from its past access charge obligations and at the same time expose small and rural local exchange carriers to lawsuits by interexchange carriers who *have* paid access charges on this traffic for years. Indeed, there is no need to address the question of whether any ruling is retroactive or prospective. The Commission can simply declare that the law is and always has been that access charges apply to the services at issue here and leave the issue of liability for back payments to the courts.

The Commission must act quickly to ensure that traditional long distance carriers do not use the label VoIP to avoid universal service and access charge obligations. We request that the Commission quickly and decisively rule that AT&T’s service has always been and continues to be a “telecommunications service” under the Act and are and always have been subject to the Commission’s existing rules on universal service and payment of access charges.

Sincerely,

Morton Bahr
President

cc: Commissioner Jonathan Adelstein
Commissioner Kathleen Abernathy
Commissioner Michael Copps
Commissioner Kevin Martin